

Regular Session, 2012

ACT No. 442

HOUSE BILL NO. 1178

BY REPRESENTATIVES LEGER AND ORTEGO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

AN ACT

To enact Chapter 27 of Title 12 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 12:1801 through 1832, relative to benefit corporations; to enact the "Benefit Corporations Law"; to provide for applicability; to provide for definitions; to provide for formation of benefit corporations; to provide for election and termination of benefit corporation status; to provide for corporate purposes; to provide for a standard of conduct for directors and officers; to provide for a benefit director; to provide for a benefit officer; to provide for a right of action; to require an annual benefits report; to provide for stock certificates; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 27 of Title 12 of the Louisiana Revised Statutes of 1950, comprised of R.S. 12:1801 through 1832, is hereby enacted to read as follows:

CHAPTER 27. BENEFIT CORPORATIONS

PART I. PRELIMINARY PROVISIONS

§1801. Short title

This Chapter shall be known and may be cited as the "Benefit Corporations Law".

§1802. Application and effect of Chapter

A. This Chapter shall apply to all benefit corporations.

B. The existence of a provision of this Chapter shall not of itself create an implication that a contrary or different rule of law is applicable to a business corporation that is not a benefit corporation. This Chapter shall not affect a statute

1 or rule of law that is applicable to a business corporation that is not a benefit
2 corporation.

3 C. Except as otherwise provided in this Chapter, the Business Corporation
4 Law, R.S. 12:1 et seq., shall be generally applicable to all benefit corporations. The
5 specific provisions of this Chapter shall control over the general provisions of the
6 Business Corporation Law. A benefit corporation may be simultaneously subject to
7 this Chapter and one or more other Chapters within this Title.

8 D. A provision of the articles or bylaws of a benefit corporation shall not
9 relax, be inconsistent with, or supersede a provision of this Chapter.

10 §1803. Definitions

11 A. As used in this Chapter, the following terms and phrases shall have the
12 meaning ascribed to them in this Section, unless the context clearly indicates
13 otherwise:

14 (1) "Affiliate" means, in relation to a person, a subsidiary of the person or
15 an entity which owns beneficially or of record a majority of the outstanding equity
16 interests of the person.

17 (2) "Benefit corporation" means a business corporation which has elected
18 to become subject to this Chapter and whose status as a benefit corporation has not
19 been terminated.

20 (3) "Benefit director" means the director designated as the benefit director
21 of a benefit corporation pursuant to R.S. 12:1822.

22 (4) "Benefit enforcement proceeding" means any claim or action for one or
23 both of the following:

24 (a) Failure of a benefit corporation to pursue or create general public benefit
25 or a specific public benefit set forth in its articles.

26 (b) Violation of any obligation, duty, or standard of conduct pursuant to this
27 Chapter.

28 (5) "Benefit officer" means the individual designated as the benefit officer
29 of a benefit corporation pursuant to R.S. 12:1824.

1 (6) "General public benefit" means a material positive impact on society and
2 the environment, taken as a whole, assessed against a third-party standard, from the
3 business and operations of a benefit corporation.

4 (7) "Independent" means having no material relationship with a benefit
5 corporation or a subsidiary of the benefit corporation.

6 (8) "Material relationship" means the relationship between a person and a
7 benefit corporation or any of its subsidiaries if any of the following apply:

8 (a) The person is, or has been within the last three years, an employee, other
9 than a benefit officer, of the benefit corporation, or an affiliate of the benefit
10 corporation.

11 (b) An immediate family member of the person is, or has been within the last
12 three years, an employee, officer, or director of the benefit corporation, or an affiliate
13 of the benefit corporation.

14 (c) There is beneficial or record ownership of five percent or more of the
15 outstanding shares of the benefit corporation by either the person or an entity of
16 which the person is a director, an officer, or a manager, or in which the person owns
17 beneficially or of record five percent or more of the outstanding equity interests.

18 (9) "Minimum vote" means:

19 (a) In the case of a business corporation, the approval by holders of
20 two-thirds of the shares present and voting of each class or series and any other
21 approval or vote required under the Business Corporation Law or the articles.

22 (b) In the case of a domestic entity other than a business corporation, the
23 approval by holders of two-thirds of each class or series of equity interests entitled
24 to vote on any issue and any other approval or vote required under the law governing
25 the internal affairs of the entity or its constituent documents.

26 (10) "Specific public benefit" means any of the following:

27 (a) Serving low-income or underserved individuals or communities.

28 (b) Promoting economic opportunity for low-income or underserved
29 individuals or communities.

1 (c) Preserving the environment, promoting positive impacts on the
 2 environment, or reducing negative impacts on the environment.

3 (d) Improving human health.

4 (e) Promoting the arts, sciences, or advancement of knowledge.

5 (f) Increasing the flow of capital to entities with a purpose listed in this
 6 Paragraph.

7 (g) Historic preservation.

8 (h) Urban beautification.

9 (11) "Subsidiary" means, in relation to a person, an entity in which the
 10 person owns beneficially or of record fifty percent or more of the outstanding equity
 11 interests.

12 (12) "Third-party standard" means a recognized standard for defining,
 13 reporting, and assessing the performance of corporations in producing general public
 14 benefit and specific public benefits which is all of the following:

15 (a) Comprehensive in that it assesses the effect of the corporation and its
 16 operations in producing general public benefit and any specific public benefit
 17 specified in the articles.

18 (b) Transparent because the following information about the standard is
 19 publicly available:

20 (i) The criteria considered when measuring the overall social and
 21 environmental performance of a business.

22 (ii) The relative weightings, if any, of those criteria.

23 (iii) The identity of the directors, officers, material owners, and the
 24 governing body of the organization that developed and controls revisions to the
 25 standard.

26 (iv) The process by which revisions to the standard and changes to the
 27 membership of the governing body are made.

28 (v) An accounting of the sources of financial support for the organization,
 29 with sufficient detail to disclose any relationships that could reasonably be
 30 considered to present a potential conflict of interest.

1 B. Terms not otherwise defined in Subsection A of this Section shall have
2 the meanings given to them in the Business Corporation Law.

3 C. For purposes of the definitions in this Section, a percentage of ownership
4 in an entity shall be calculated as if all outstanding rights to acquire equity interests
5 in the association have been exercised.

6 §1804. Election of status; corporate name

7 A. A business corporation incorporated in accordance with R.S. 12:21 et seq.
8 may elect to be a benefit corporation under this Chapter by stating in its articles that
9 it is a benefit corporation subject to this Chapter.

10 B. Any amendment to the articles of an existing business corporation to add
11 a statement that it is a benefit corporation subject to this Chapter shall be adopted by
12 at least the minimum vote. The notice of the meeting of shareholders to approve the
13 amendment shall state the specific public benefits, if any, to be included in the
14 purposes of the benefit corporation and shall explain the anticipated impact on
15 shareholders of becoming a benefit corporation.

16 C. If an entity that is not a benefit corporation is a party to a merger or
17 consolidation, and the surviving or new entity in the merger or consolidation is to be
18 a benefit corporation, then the plan of merger or consolidation shall be adopted by
19 at least the minimum vote.

20 D. The corporate name of a benefit corporation shall end with the following
21 phrase, which may be in parentheses, "A Benefit Corporation".

22 §1805. Termination of status

23 A. A benefit corporation may terminate its status as such and cease to be
24 subject to this Chapter by amending its articles to delete the provision required by
25 R.S. 12:1804 to be stated in the articles of a benefit corporation. In order to be
26 effective, the amendment shall be adopted by at least the minimum vote.

27 B. If a merger or consolidation of a benefit corporation would have the effect
28 of terminating the status of a business corporation as a benefit corporation, in order
29 to be effective, the plan of merger or consolidation shall be adopted by at least the
30 minimum vote of the benefit corporation. Any sale, lease, exchange, or other

1 disposition of all or substantially all of the assets of a benefit corporation, unless the
2 transaction is in the usual and regular course of business, shall not be effective unless
3 the transaction is approved by at least the minimum vote.

4 §§1806-1810. [Reserved.]

5 PART II. CORPORATE PURPOSES

6 §1811. Corporate purposes

7 A. A benefit corporation shall have a purpose of creating a general public
8 benefit. This purpose is in addition to its purpose under R.S. 12:21 et seq.

9 B. The articles of a benefit corporation may identify one or more specific
10 public benefits that it is the purpose of the benefit corporation to create in addition
11 to its purposes under R.S. 12:21 et seq. and Subsection A of this Section. The
12 identification of a specific public benefit under this Subsection shall not limit the
13 obligation of a benefit corporation under Subsection A of this Section.

14 C. The creation of a general public benefit and specific public benefit under
15 Subsections A and B of this Section is in the best interests of the benefit corporation.

16 D. A benefit corporation may amend its articles to add, amend, or delete the
17 identification of a specific public benefit that it is the purpose of the benefit
18 corporation to create. In order to be effective, the amendment shall be adopted by
19 at least the minimum vote.

20 E. A professional corporation that is a benefit corporation shall not be
21 deemed in violation of R.S. 12:804, 904, 984, 1054, 1074, 1089, 1113, 1133, 1154,
22 1193, or 1403 by having the purpose to create general public benefit or a specific
23 public benefit.

24 §§1812-1820. [Reserved.]

25 PART III. ACCOUNTABILITY

26 §1821. Standard of conduct for directors

27 A. In discharging the duties of their respective positions and in considering
28 the best interests of the benefit corporation, the board of directors, committees of the
29 board, and individual directors of a benefit corporation:

1 (1) Shall consider the effects of any action or inaction upon all of the
2 following:

3 (a) The shareholders of the benefit corporation.

4 (b) The employees and work force of the benefit corporation, its subsidiaries,
5 and its suppliers.

6 (c) The interests of customers as beneficiaries of the general public benefit
7 or specific public benefit purposes of the benefit corporation.

8 (d) Community and societal factors, including those of each community in
9 which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers
10 are located.

11 (e) The local and global environment.

12 (f) The short-term and long-term interests of the benefit corporation,
13 including benefits that may accrue to the benefit corporation from its long-term plans
14 and the possibility that these interests may be best served by the continued
15 independence of the benefit corporation.

16 (g) The ability of the benefit corporation to accomplish its general public
17 benefit purpose and any specific public benefit purpose.

18 (2) May consider other pertinent factors or the interests of any other group
19 that they deem appropriate.

20 (3) Shall not be required to give priority to the interests of a particular person
21 or group referred to in Paragraph (1) or (2) of this Subsection over the interests of
22 any other person or group unless the benefit corporation has stated in its articles the
23 intention to give priority to certain interests related to the accomplishment of its
24 general public benefit purpose or of a specific public benefit purpose identified in the
25 articles.

26 B. The consideration of interests and factors in the manner required by
27 Subsection A of this Section shall not constitute a violation of R.S. 12:91.

28 C. A director shall not be personally liable for monetary damages for any of
29 the following:

1 (1) Any act or omission covered by a provision in the articles of
 2 incorporation that eliminates or limits the liability of the director as authorized in
 3 R.S. 12:24(C)(4).

4 (2) Any act or omission as a director if the director performed the duties of
 5 office pursuant to R.S. 12:91.

6 (3) Failure of the benefit corporation to pursue or create a general public
 7 benefit or specific public benefit.

8 D. A director shall not have a duty to a person that is a beneficiary of the
 9 general public benefit purpose or a specific public benefit purpose of a benefit
 10 corporation arising from the status of the person as a beneficiary.

11 §1822. Benefit director

12 A. The board of directors of a benefit corporation shall include a director
 13 who shall be designated the benefit director and who shall have, in addition to the
 14 powers, duties, rights, and immunities of the other directors of the benefit
 15 corporation, the powers, duties, rights, and immunities provided for in this Part.

16 B. The benefit director shall be elected, and may be removed, pursuant to
 17 R.S. 12:81, and shall be an individual who is independent. The benefit director may
 18 serve as the benefit officer at the same time as serving as the benefit director. The
 19 articles or bylaws of a benefit corporation may prescribe additional qualifications or
 20 duties of the benefit director not inconsistent with this Subsection.

21 C. The benefit director shall be responsible for the preparation of an annual
 22 benefit report submitted to shareholders as required by R.S. 12:1831. The benefit
 23 director may retain an independent third party to audit the annual benefit report or
 24 conduct any other assessment of the corporation's pursuit of its general public benefit
 25 purpose and any specific public benefit purpose. The annual benefit report shall
 26 include a statement of the benefit director, in the opinion of the benefit director, on
 27 all of the following:

28 (1) Whether the benefit corporation acted in accordance with its general
 29 public benefit purpose and any specific public benefit purpose in all material respects
 30 during the period covered by the report.

1 (2) Whether the directors and officers complied with R.S. 12:1821(A) and
2 1823(A), respectively.

3 (3) If, in the opinion of the benefit director, the benefit corporation or its
4 directors or officers failed to comply with R.S. 12:1821(A) and 1823(A), a
5 description of the ways in which the benefit corporation or its directors or officers
6 failed to comply.

7 D. The act or inaction of an individual in the capacity of a benefit director
8 shall constitute for all purposes an act or inaction of that individual in the capacity
9 of a director of the benefit corporation.

10 E. Regardless of whether the bylaws of a benefit corporation include a
11 provision eliminating or limiting the personal liability of directors authorized by R.S.
12 12:24(C)(4), a benefit director shall not be personally liable for an act or omission
13 in the capacity of a benefit director unless the act or omission constitutes
14 self-dealing, willful misconduct, or a knowing violation of law.

15 F. The benefit director of a professional corporation shall not be required to
16 be independent.

17 §1823. Standard of conduct for officers

18 A. Each officer of a benefit corporation shall consider the interests and
19 factors described in R.S. 12:1821 in the manner provided in that Section if all of the
20 following applies:

- 21 (1) The officer has discretion to act with respect to the matter.
- 22 (2) It reasonably appears to the officer that the matter may have a material
23 effect on the creation by the benefit corporation of a general public benefit or a
24 specific public benefit identified in the articles of the benefit corporation.

25 B. The consideration of interests and factors pursuant to Subsection A of this
26 Section shall not constitute a violation of R.S. 12:91.

27 C. An officer shall not be personally liable for monetary damages for either
28 of the following:

- 29 (1) An action or omission as an officer if the officer performed the duties of
30 the position pursuant to R.S. 12:91.

1 (2) Failure of the benefit corporation to pursue or create general public
2 benefit or specific public benefit.

3 D. An officer shall not have a duty to a person that is a beneficiary of the
4 general public benefit purpose or a specific public benefit purpose of a benefit
5 corporation arising from the status of the person as a beneficiary.

6 §1824. Benefit officer

7 A. A benefit corporation may have an officer designated as the benefit
8 officer.

9 B. A benefit officer shall have all of the following:

10 (1) The powers and duties relating to the purpose of the corporation to create
11 a general public benefit or specific public benefit provided by the bylaws or, absent
12 controlling provisions in the bylaws, by resolutions or orders of the board of
13 directors.

14 (2) The duty to prepare the benefit report required by R.S. 12:1831.

15 C. An officer shall not be personally liable for monetary damages for any of
16 the following:

17 (1) Any act or omission covered by a provision in the articles of
18 incorporation that eliminates or limits the liability of the officer as authorized in R.S.
19 12:24(C)(4).

20 (2) Any act or omission as an officer if the officer performed the duties of
21 office pursuant to R.S. 12:91.

22 (3) Failure of the benefit corporation to pursue or create general public
23 benefit or a specific public benefit.

24 §1825. Right of action

25 A. The duties of directors and officers under this Chapter and the general
26 public benefit purpose and any specific public benefit purpose of a benefit
27 corporation may be enforced only in accordance with this Section in a benefit
28 enforcement proceeding, and no person shall bring an action or assert a claim against
29 a benefit corporation.

1 B. A benefit enforcement proceeding shall be commenced or maintained
2 only directly by the benefit corporation or derivatively by one of the following
3 parties:

4 (1) A shareholder.

5 (2) A benefit director.

6 (3) Other persons as specified in the articles or bylaws of the benefit
7 corporation.

8 §§1826-1830. [Reserved.]

9 PART IV. TRANSPARENCY

10 §1831. Annual benefit report

11 A. A benefit corporation shall prepare an annual benefit report including all
12 of the following:

13 (1) A narrative description of all of the following:

14 (a) The ways in which the benefit corporation pursued a general public
15 benefit during the year and the extent to which the general public benefit was
16 created.

17 (b) The ways in which the benefit corporation pursued a specific public
18 benefit that the articles state it is the purpose of the benefit corporation to create and
19 the extent to which that specific public benefit was created.

20 (c) Any circumstances that have hindered the creation by the benefit
21 corporation of a general public benefit or specific public benefit.

22 (d) The process and rationale for selecting or changing the third-party
23 standard used to prepare the benefit report.

24 (2) An assessment of the performance of the benefit corporation in pursuing
25 the creation of general public benefit against a third-party standard which is either
26 applied consistently with any application of that standard in prior benefit reports or
27 accompanied by an explanation of the reasons for any inconsistent application. The
28 assessment shall not be required to be performed, audited, or certified by a third-
29 party standards provider.

1 (3) The name of the benefit director and the benefit officer, if any, and the
2 address to which correspondence to each of them may be directed.

3 (4) The compensation paid by the benefit corporation during the year to each
4 director in the capacity of a director.

5 (5) The name of each person that owns five percent or more of the
6 outstanding shares of the benefit corporation.

7 (6) The statement of the benefit director pursuant to R.S. 12:1822(C).

8 (7) A statement of any connection between the organization that established
9 the third-party standard, or its directors, officers, or any holder of five percent or
10 more of the governance interests in the organization, and the benefit corporation or
11 its directors, officers, or any holder of five percent or more of the outstanding shares
12 of the benefit corporation, including any financial or governance relationship which
13 might materially affect the credibility of the use of the third-party standard.

14 B. A benefit corporation shall annually send a benefit report to each
15 shareholder either:

16 (1) Within one hundred twenty days following the end of the fiscal year of
17 the benefit corporation.

18 (2) At the same time that the benefit corporation delivers any other annual
19 report to its shareholders.

20 C. A benefit corporation shall post all of its benefit reports on the public
21 portion of its Internet website, if any. The compensation paid to directors and
22 financial or proprietary information included in the benefit reports may be omitted
23 from the benefit reports as posted.

24 D. If a benefit corporation does not have an Internet website, the benefit
25 corporation shall provide a copy of its most recent benefit report, without charge, to
26 any person that requests a copy, but the compensation paid to directors and financial
27 or proprietary information included in the benefit report may be omitted from the
28 copy of the benefit report provided.

29 §1832. Stock certificates

1 All certificates representing shares in a benefit corporation shall contain, in
2 addition to any other statements required by the Business Corporation Law, the
3 following conspicuous language on the face of the certificate: "This corporation is
4 a benefit corporation subject to the Benefit Corporations Law, R.S. 12:1801 et seq."

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____